

### § 537.3

claims waived by treaty, for example, North Atlantic Treaty Association Status of Forces Agreement (NATO SOFA), Article VIII, paragraph 1.

#### § 537.3 Claims collectible.

(a) *Claims for medical expenses.* Claims for the value of medical care furnished to active or retired members of the uniformed services, family members of either category, employees of the Department of the Army (DA) or Department of Defense (DOD), or other persons to whom care was furnished because authorized or required by law and resulting in injury, death or disease, including those:

(1) Arising out of a tort under local law,

(2) Arising out of an on-the-job injury compensable under workers' compensation law except for Federal Employees Compensation Act (FECA) recoveries,

(3) Based on the United States being a third-party beneficiary of the insurance contract of the injured party to include medical payment coverage, lost wages, as well as uninsured, underinsured, and no-fault coverage.

(b) *Claims for lost military pay.* Claims for the value of lost pay of active members of the uniformed services arising out of a tort under local law resulting in injury, death or disease.

(c) *Claims for property loss.* Claims arising out of a tort under local law for the value of lost or missing DA or DOD property, including non-appropriated fund instrumentality (NAFI) property, or for the cost of repairs of such property, including damage to assigned quarters, are not collectible under 10 U.S.C. 2775. (See § 537.4).

#### § 537.4 Claims not collectible.

(a) Where the tortfeasor is a department, agency or instrumentality of the United States. (See § 536.27(g) of this chapter).

(b) Where the tortfeasor is a member of the uniformed services or an employee of the DA or DOD, acting within the scope of employment, who damages or loses property. See AR 735-5, chapter 13.

(c) Where the damage or loss of property falls under a contractor bill of lading and recovery is pursued by the contracting agency, e.g., Surface Deploy-

### 32 CFR Ch. V (7-1-09 Edition)

ment and Distribution Command (SDDC), formerly the Military Traffic Management Command (MTMC), for lost or destroyed shipments.

(d) Where damage to assigned quarters, or equipment or furnishings therein, is collectible from a member of the uniformed services under 10 U.S.C. 2775.

(e) Where the medical care is furnished by a Department of Veterans Affairs facility to other than active duty members of the uniformed services for service-connected disabilities.

#### § 537.5 Applicable law.

(a) *Basis for recovery.* (1) Most recovery assertions are based on the negligence or wrongful acts or omissions of the person or entity that caused the loss. These actions or omissions must constitute a tort as determined by the law of place of occurrence, except in no-fault jurisdictions where the no-fault law permits recovery. Where the tort is not complete within the jurisdiction where it originally occurred, the law of the original jurisdiction is nevertheless applicable. For example, if a plane crashes in Virginia due to the negligence of a Federal Aviation Administration controller in Maryland, Maryland law determines the extent and nature of the tort. However, as to what law of damages is applicable, Maryland or Virginia depechage (choice of law) theory may apply. For example, if the flight originated in Indiana and the destination was Virginia, the conflict law of both Maryland and Virginia must be applied. See DA Pam 27-162, paragraph 2-35.

(2) Recovery assertions based on the United States being a third-party beneficiary or subrogee are not based on tort, but on the right to recover under local law, for example, the right of a third party to recover workers' compensation benefits is based on local law. However, the right of a third-party beneficiary to recover under an insurance contract may turn on whether an exclusionary clause is valid under the law of the jurisdiction where the contract was made.

(b) *Statute of limitations.* (1) Federal law determines when a recovery assertion must be made. Assertions for the